Supreme Court, U.S.
FILED
SEP 22 1992
OFFICE OF THE CLERK

No. 92-171

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

DERALD VAN CAMP,

Petitioner,

v.

AT&T INFORMATION SYSTEMS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

JOSEPH RAMIREZ
JOHN J. HOPKINS
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
One Speedwell Avenue
Morristown, NJ 07960
(201) 898-2500

DAVID W. CARPENTER *
JOSEPH R. GUERRA
SIDLEY & AUSTIN
One First National Plaza
Chicago, IL 60603
(312) 853-7000

ANTHONY A. HAISCH
HAISCH & BOYDA
100 Renaissance Center
Suite 1750
Detroit, MI 48243
(313) 259-4370

* *Counsel of Record*

September 22, 1992

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the lower court erroneously held that petitioner's state-law challenge to the validity of his early retirement election "related to" an employee benefit plan and was therefore preempted by the Employee Retirement Income Security Act under this Court's rulings in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478 (1990).

STATEMENT REQUIRED BY RULE 29.1

AT&T Information Systems, Inc. was merged into the American Telephone and Telegraph Company ("AT&T") effective December 31, 1989. AT&T has no parent company. In addition to its wholly-owned subsidiaries, AT&T has ownership interests, either directly or through wholly-owned subsidiaries, in the following companies that have publicly-traded securities: AT&T Capital Corporation, AT&T Credit Corporation, *Compagnie Industriali Riunite* S.P.A., and NCR Corporation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT REQUIRED BY RULE 29.1	ii
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	6
CONCLUSION	11

TABLE OF AUTHORITIES

CASES — Page

Brinker v. *Michigan Bell Tel. Co.*, 394 N.W.2d 88 (Mich. Ct. App. 1986) 8
Champion Int'l Corp. v. *Brown*, 731 F.2d 1406 (9th Cir. 1984) 10
Ethridge v. *Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988) 8
Ingersoll-Rand Co. v. *McClendon*, 111 S. Ct. 478 (1990) 2
Lane v. *Goren*, 743 F.2d 1337 (9th Cir. 1984) 7
Martori Bros. Distribs. v. *James-Massengale*, 781 F.2d 1349 (9th Cir. 1986) 7
Nolan v. *Otis Elevator Co.*, 505 A.2d 580 (N.J.), *cert. denied*, 479 U.S. 820 (1986) 10
Sorosky v. *Burroughs Corp.*, 826 F.2d 794 (9th Cir. 1987) 10
Shaw v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983) 2, 8, 9
Teper v. *Park West Galleries, Inc.*, 427 N.W.2d 535 (Mich. 1988) 8
Warren v. *Oil, Chem. & Atomic Workers, Union-Indus. Pension Fund*, 729 F. Supp. 563 (E.D. Mich. 1989) 10

STATUTES

Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 29 U.S.C. § 1001 *et seq.*)
29 U.S.C. § 1144(d) ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-174

DERALD VAN CAMP,

Petitioner,

v.

AT&T INFORMATION SYSTEMS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

This case presents neither the questions nor the conflicts the Petition alleges. Petitioner brought this suit to invalidate his election to participate in an enhanced early retirement offer that had been extended to him under a pension plan. Contrary to petitioner's misstatements, the Sixth Circuit did not rule that the Employee Retirement Income Security Act (ERISA) preempted this state-law claim because petitioner "received plan benefits subsequent to [an allegedly] discriminatory act" and was seeking "inclusion of benefits in a claim for damages." Pet. at 11. Rather, the court held that, because petitioner challenged the validity of a pension document subject to the requirements of ERISA (Pet. App. 2a), and his claims therefore "directly affect [his] status . . . as [a] beneficiary in an ERISA plan" (*id.* at 8a), those claims "relate to" a plan within the meaning of Section 514(a) of ERISA and were preempted.

This holding is a routine application of well-settled principles to a unique set of facts. It follows this Court's rulings in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478 (1990), and does not conflict with the decisions of any other court. The only way petitioner can claim otherwise is by misstating the nature of his claims and the decisions below.

COUNTERSTATEMENT OF THE CASE

1. In July 1989, AT&T laterally reassigned petitioner from his position as Operations Manager in Detroit to a position as a Staff Manager, Continental United States, in a Detroit suburb. In the latter position, petitioner reported to a supervisor in New Jersey. Petitioner objected to the reassignment because, in his view, it would entail extensive travel, a requirement unacceptable to him in light of his wife's poor health.[1]

Shortly thereafter, AT&T offered all eligible employees the choice of electing to participate in the AT&T Management Pension Plan Special Retirement Option, a specially enhanced early retirement program extended pursuant to AT&T's ERISA-governed Management Pension Plan. Under the terms of the early retirement program, petitioner and thousands of other potentially eligible employees were offered a credit of five additional years of service and five additional years in their pension "age," plus a 15 percent enhancement of pension benefits for five years. As a result, under the offer, petitioner's pension payments would be calculated as though he had served 37, rather than 32, years with the company and as if he had retired at age 56 rather than 51. His pension payments would then be enhanced an additional 15 percent for five

[1] In this Court, petitioner claims that his own poor health, as well as that of his wife, precluded "extensive" travel. Pet. at 3. This assertion, however, appears nowhere in the pleadings below and is made for the first time in the Petition.

years. In order to receive these and certain other enhancements, however, the AT&T Management Pension Plan explicitly required eligible employees to retire voluntarily and irrevocably.[2]

Petitioner accepted the enhanced early-retirement offer on November 22, 1989. In the election form he signed, which bears the caption "Voluntary Decision to Retire from AT&T on December 30, 1989," petitioner acknowledged that he had "read the information package that describes recent enhancements to the AT&T Management Pension Plan and other provisions relative to the Special Retirement Option." See Brief for Appellees at 3. He further acknowledged that the election form was his "official notification to voluntarily retire from AT&T with a service pension on December 30, 1989," and that he "underst[ood], that [his] decision under the Special Retirement Option [was] irrevocable." *Id.*

2. Eleven months later, petitioner initiated suit in Michigan state court alleging that his "voluntary" retirement was in fact a discriminatorily-motivated constructive discharge. Alleging violations of Michigan's Elliott-Larsen Civil Rights Act, petitioner sought back pay, front pay, exemplary and punitive damages, and reinstatement to the company from which he had "irrevocably" retired. Following AT&T's removal of the case, the United States District Court for the Eastern District of Michigan denied petitioner's motion for remand, noting that "it appeared that the allegations of 'forced retirement' and the prayer for reinstatement necessarily implicated ERISA rights and obligations." Pet. App. 13a.

---

[2] These requirements were directly related to the administration, and administrability, of the Management Pension Plan. The requirement that employees retire irrevocably, for example, protected the Plan against the disruption that would occur if large numbers of the thousands of eligible employees chose special enhancements only to relinquish them later.

The court afforded petitioner an opportunity to amend his complaint, however, in order to plead claims arising solely under state law. *Id.*

Petitioner thereafter filed an amended complaint in which he again alleged that AT&T had "forced" him into retirement for discriminatory reasons. He deleted certain references to AT&T's benefit plans, however, and dropped his request for reinstatement in the hopes of "circumvent[ing] any possible suggestion that [he] was seeking to undo his voluntary early retirement." Brief of the Appellant Derald Van Camp at 2. The district court nevertheless recognized that, "[u]nless [petitioner's] retirement was involuntary, there would be no justification for altering or not enforcing the terms of the pension plan." Pet. App. 14a-15a. Petitioner's cosmetic changes, the court concluded, did not alter the substance of his claims, which "continue to implicate ERISA." *Id.* at 13a. Citing this Court's decision in *Ingersoll-Rand*, the district court found that " 'the existence of a pension plan is a critical factor in establishing liability under [petitioner's Michigan] wrongful discharge' " claims (*id.* at 15a (quoting *Ingersoll-Rand*, 111 S. Ct. at 483)), and that his claims were therefore preempted under Section 514(a) of ERISA.

Rather than assert any claim under ERISA or under federal employment law, petitioner sought reconsideration of the district court's order. Following the denial of that request, AT&T moved for summary judgment, which the district court granted by order dated July 17, 1991. In dismissing petitioner's claims, the court noted that "[s]ince [petitioner] do[es] not intend to pursue [his] ERISA or any other federal law claim, there is no reason for the case to continue on the Court's docket." *Id.* at 11a.

3. The Sixth Circuit affirmed. The court recognized that, while the sweep of ERISA's preemption provision is broad, some claims may affect employee benefit plans in

a manner "too tenuous, remote, or peripheral" to "relate to" the plan. *Id.* at 6a (quoting *Shaw*, 463 U.S. at 100 n.21). The court of appeals found, however, that, "under the facts of this case," petitioner's claims "would have more than an incidental effect on [an] existing pension plan" and were thus preempted. *Id.* at 9a.

Critical to the court's determination was the fact that petitioner's state law claims could not be resolved without passing on the validity of his election to participate in AT&T's ERISA-governed special retirement plan. Despite petitioner's insistence that this election was "immaterial" to his state law claims (Brief of the Appellant Derald Van Camp at 12), the court of appeals recognized that those claims were "inconsistent with [his] retirement agreement." Pet. App. 8a. The court explained that this agreement

> is the fulcrum on which resolution of [petitioner's claims] turns. If [petitioner] is entitled to recover on the theory that, as he claims, his retirement was forced by AT&T's age and sex discrimination, and, therefore, was not voluntary, a court first would have to rule on the validity of the retirement agreement. Such a determination could be made only with reference to ERISA and would affect the existing benefit plan and the relations between [petitioner] and AT&T as 'principal ERISA entities.'

Pet. App. 8a (citation omitted). Any finding that petitioner was forced to retire, the court concluded, would "substantially alter the purportedly 'irrevocable' agreement under which [he] is receiving benefits" and thus would "directly affect [his] status . . . as [a] beneficiary in an ERISA plan." *Id.* at 8a-9a.

REASONS FOR DENYING THE PETITION

The Sixth Circuit's decision is an application of this Court's holdings in *Shaw* and *Ingersoll-Rand* to a set of unique facts. It is neither "extraordinary" nor "far-reaching," and in no way threatens to "eviscerate the states' traditional authority over employment matters" or to "paralyze the enforcement of federal employment discrimination laws." Pet. at 7. Petitioner's claims to the contrary depend entirely on his mischaracterization of the lower court's ruling.

A. According to petitioner, "the two premises for the Sixth Circuit's conclusion that [his] state-law claim related to a benefit plan [were] the receipt of retirement benefits and the inclusion of benefits in a damages award." *Id.* at 8. Even the most cursory examination of the opinion below, however, reveals that the Sixth Circuit did not rest its decision on either of these grounds.

The Sixth Circuit's preemption determination rested on the fact that petitioner's claims "would, of necessity, involve [a] determination of [his] *status* as a participant in AT&T's pension plan." Pet. App. 9a (emphasis added). Thus, just as in *Ingersoll-Rand*, his "cause of action relate[d] not merely to pension benefits, but to the essence of the pension *plan* itself." 111 S. Ct. at 483 (emphasis in original). In particular, the court noted that, in order to pass on petitioner's claims of discrimination, a court "first would have to rule on the validity of the *retirement agreement*." Pet. App. 8a (emphasis added). It therefore found that these claims were related to a pension plan not by virtue of petitioner's "mere receipt of retirement benefits" (Pet. at 9), but because his state claims required "a finding that [he] was forced to retire," and this finding in turn "*would substantially alter the purportedly 'irrevocable' agreement*." Pet. App. 8a-9a (emphasis added). Such claims, the Sixth Circuit concluded, were sufficiently related to a pension plan to be preempted under Section 514(a).

The lower court's decision was manifestly correct. Under the terms of the AT&T Management Pension Plan Special Retirement Option, petitioner could not participate in the enhanced plan unless he retired voluntarily and irrevocably. While he may now eschew reinstatement and otherwise seek to "circumvent any possible suggestion that [he is] seeking to undo his voluntary early retirement" (Brief of the Appellant Derald Van Camp at 2), the reality is that he cannot prevail on his discrimination claims unless he proves that his retirement was involuntary. Whether or not he formally seeks to rescind his election, therefore, his claims necessarily constitute a challenge to his status as a participant in AT&T's ERISA-governed early retirement plan: if he were to prevail, his prior election would be null and void and, under the terms of the plan, AT&T would have to terminate petitioner's participation; alternatively, if AT&T permitted petitioner to continue to participate notwithstanding his involuntary retirement, it would effectively alter the terms of its plan for this one participant. Moreover, state law challenges to the voluntariness or irrevocability of special enhancement elections would plainly burden the administration of the plan itself, by undermining the protections these requirements were designed to afford the plan. See note 2, *supra*.

The Sixth Circuit's decision does not conflict with the decision of any other court. None of the cases petitioner cites involved claims that "directly affect[ed] the status of [the employees] . . . as beneficiar[ies] in an ERISA plan." Pet. App. 8a. All but one simply held that a state claim is not related to a pension plan within the meaning of Section 514(a) simply because the plan serves as a measure of damages.[3] In the remaining case, *Lane* v.

[3] *Martori Bros. Distribs.* v. *James-Massengale*, 781 F.2d 1349 (9th Cir. 1986), involved a state unfair labor practice award in which an employer was required to pay damages measured by the difference between the ERISA-governed benefits it actually paid its employees and those it would have paid had it bargained in good

Gorcia, 743 F.2d 1337 (9th Cir. 1984), the Ninth Circuit announced the unremarkable proposition that a pension trust fund is subject to state anti-discrimination laws in its capacity as an employer.

Moreover, because the Sixth Circuit's decision is limited to state claims that affect the employee's status as a participant in an ERISA plan, it will not result in widespread preemption of "garden-variety" state discrimination suits. Indeed, the Sixth Circuit's preemption analysis is fully consistent with the Michigan Court of Appeals' determination in *Brinker* v. *Michigan Bell Telephone Co.*, 394 N.W.2d 88 (Mich. Ct. App. 1986), that ERISA preempts state-law fraud and misrepresentation challenges to the validity of an early retirement election. In *Brinker*, as here, the employee claimed that his election was the product of employer conduct proscribed by state law. Like the Sixth Circuit, the Michigan court concluded that the claim was related to an ERISA plan because the state causes of action were "intimately connected to defendant's administration of the" ERISA-governed plan. *Id.* at 90.

In concluding that petitioner's state claims were preempted, the lower court engaged in precisely the type of careful line-drawing that *Shaw* requires. See 463 U.S. at 100 n.21. Because the line the court drew was factually and legally correct, and does not conflict with the

---

faith. The award, which entailed "the calculation of damages for lost compensation by referring to existing ERISA plans" (*id.* at 1359), did not affect the employees' status as participants in the plan. Similarly, in *Teper* v. *Park West Galleries, Inc.*, 427 N.W.2d 535 (Mich. 1988), the pension plan merely "serve[d] as a measure of damages suffered as a result of the employer's breach" of contract, *id.* at 545 (Riley, C.J., concurring); the employee's claim did not implicate her status under the plan. And in *Ethridge* v. *Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988), in which the Ninth Circuit held that a tortious discharge claim was not preempted "simply because [the employee] sought to recover lost salary and benefits," the court specifically noted that there was no dispute over whether the employee "was a participant in the plan." *Id.* at 1405.

decisions of other federal and state courts, it presents no occasion for review by this Court.

B. For the same reasons, there is no basis for review of petitioner's related claim that the Sixth Circuit's ruling vitiates Section 514(d) of ERISA and will thus "severely impair the enforcement of the federal civil rights laws." Pet. at 14. Section 514(d) provides that nothing in Section 514(a) "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the *United States*." 29 U.S.C. § 1144(d) (emphasis added). In *Shaw*, this Court held that Section 514(d) does not preserve state discrimination laws that prohibit conduct that Title VII does not proscribe. 463 U.S. at 104-06. The Court did not determine the extent to which Section 514(d) preserves *state* law, observing only that it "*may* operate to exempt [from the preemptive sweep of subsection (a)] provisions of state laws upon which federal laws *depend* for their enforcement." *Id.* at 104 (emphasis added).

Petitioner treats this dictum as a holding, then claims that the Sixth Circuit violated that holding because its decision will force discrimination victims to "abandon[]" state remedies (Pet. at 16 & n.21) and thereby "paralyze" the enforcement of federal civil rights laws. *Id.* at 7. This argument once again rests on petitioner's misstatement of the Sixth Circuit's ruling. The Sixth Circuit did not hold that state discrimination claims are preempted if they are brought by any "employee [who] received plan benefits subsequent to a discriminatory act." *Id.* at 11. Rather, it held only that those state discrimination claims that directly affect an employee's status as a participant in an ERISA plan will be preempted.

Shaw upheld a "partial pre-emption of state fair employment laws" because the "minor practical difficulties" of such preemption do not impair the enforcement of *federal* law. 463 U.S. at 105-06. Subsequently, other courts have recognized that Section 514(d) does not preserve state law claims that, while fully consistent with

federal antidiscrimination law, directly affect the relations of plan beneficiaries and the plan. See, *e.g.*, *Champion Int'l Corp.* v. *Brown*, 731 F.2d 1406, 1408-09 (9th Cir. 1984) (Section 514(d) does not preserve state age discrimination claim affecting the manner in which a plan determines the service credit of beneficiaries). Nor does petitioner cite a single holding of any other court that supports his contention that Section 514(d) preserves his claims.[4]

In any event, petitioner's claims fall outside the scope of Section 514(d) for a second reason: they are inconsistent with federal law. Petitioner failed to initiate state proceedings within 300 days of his allegedly coerced agreement to retire, as both Title VII and the Age Discrimination in Employment Act require. Because the enforcement of federal law does not depend on the prosecution of state claims that are untimely under federal limitations periods, courts have consistently concluded that such claims are not preserved by Section 514(d). See *Warren* v. *Oil, Chem. & Atomic Workers Union-Indus. Pension Fund*, 729 F. Supp. 563, 566-67 (E.D. Mich. 1989) (Elliott-Larsen Act claim commenced outside federal limitations period not preserved); *Nolan* v. *Otis Elevator Co.*, 505 A.2d 580, 588 (N.J.) (invocation of state remedy "after a federal remedy is no longer available does not further the federal program" and thus is not preserved by Section 514(d)), *cert. denied*, 479 U.S. 820 (1986). The Sixth Circuit's implicit rejection of petitioner's Section 514(d) argument below, therefore, was entirely proper, and does not conflict with the decision of any other court.

---

[4] The sole case petitioner cites in support of his expansive view of Section 514(d) does not even mention the provision, and involved a claim that the employer did not contend was preempted. *See Sorosky* v. *Burroughs Corp.*, 826 F.2d 794, 800 (9th Cir. 1987).

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

JOSEPH RAMIREZ
JOHN J. HOPKINS
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
One Speedwell Avenue
Morristown, NJ 07960
(201) 898-2500

DAVID W. CARPENTER *
JOSEPH R. GUERRA
SIDLEY & AUSTIN
One First National Plaza
Chicago, IL 60603
(312) 853-7000

ANTHONY A. HAISCH
HAISCH & BOYDA
100 Renaissance Center
Suite 1750
Detroit, MI 48243
(313) 259-4370

* *Counsel of Record*

September 22, 1992